

MINUTES
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, December 15, at 9:00 a.m.
Montana Historical Society, Lobby/Auditorium
Helena, MT

PRESENT: Governor Brian Schweitzer, Secretary of State Brad Johnson, Superintendent of Public Instruction Linda McCulloch, Attorney General Mike McGrath, and Auditor John Morrison

INFORMATIONAL ITEMS

1208-1 A. 2008 REVENUE CHECKS PRESENTATION TO SUPERINTENDENT OF PUBLIC INSTRUCTION

The Helena High Chamber Orchestra, conducted by Beth Mazanec, presented a holiday music program in the lobby of the Montana Historical Society prior to the check presentation ceremony. Members of the orchestra include: Dalton Allen, Taylor Benefiet, Amy Bischoff, Jeremy Blackburn, Sarah Capdeville, Dominic Driscoll, Sydney Duke, Cari Eckert, Carina Ford, Emily Goe, Brooke Gould, Emily Harris, Amanda Helmerick, Anna Hill, Elena Johnson, Cricket Lewis, Rosa Lincoln, Mara Menehan, Adam Mendez, Kendra Mergenthaler, Maggie Norris, Alison O'Neil, Geoffrey Rolan, RaeLynn Schlicht, Emily Schwaller, McKinzie Stratton, and Jessica Wilson.

The 2008 revenue checks were presented to Superintendent of Public Instruction on behalf of the schools of Montana:

- ♦ Public Schools - \$53.4 million
- ♦ School Facility Improvement - \$15.4 million
- ♦ Technology Acquisition - \$1.9 million

Mr. Johnson moved for approval of the minutes from the November 17, 2008, meeting of the Board of Land Commissioners. Seconded by Mr. Morrison.

MONTANA HISTORICAL SOCIETY HIGHLIGHTS

Denise King, Montana Historical Society, gave some highlights of the MHS:

- ♦ MHS is the oldest state agency in Montana.
- ♦ MHS has a refurbished gallery that contains works by artist Charlie Russell. Some of those works have not been available for public viewing in decades.
- ♦ MHS features works dating from 1902 through 1938 by Joe Shirley, Russell-contemporary.
- ♦ There is a gallery hosting quilts from around the state. The lobby Christmas tree is decorated with quilted ornaments that will be auctioned off. The proceeds from the auction will go toward the *Quilts of Montana* book.
- ♦ MHS recently published the textbook *Montana: Stories of the Land*, which has been distributed to over 5000 students.

B. FISCAL YEAR 2008 HIGHLIGHTS PRESENTATION

Tom Schultz, Trust Land Management Division administrator, presented highlights from Fiscal Year 2008. The goals of the division are:

- ♦ to be the employer of choice;
- ♦ exert leadership in the stewardship of Montana's natural resources;
- ♦ create an adaptable organization that can drive and respond to change;
- ♦ increase outreach and involvement; and

- ♦ manage surface and mineral resources to provide substantial levels of trust revenue, stewardship, and public benefit consistent with the fiduciary duties and legal commitments.

In FY 08 there were 143,405 children enrolled in public schools. The average state share is \$5092 per pupil, of which 7.32 percent is generated by trust land activities. That equals \$373 per pupil. Additional funds generated in FY 08:

- ♦ Technology Acquisition Fund – \$1,948,830
- ♦ School Facility Improvement Fund - \$15,382,591

TLMD benefits 11 institutions in addition to common schools, including the University of Montana, other higher learning institutions, and some special schools or institutions.

TLMD's four bureaus are:

- ♦ Agriculture and Grazing Management Bureau – generated \$12.8 million in agriculture and \$7.1 in grazing. The bureau completes inspections of leased tracts, conducts cultural and paleontological inventories, works with the Water Court for water rights on trust lands, participates in biocontrol collections, and hired two wardens from FWP to assist in education and enforcement of recreational use on state lands;
- ♦ Forest Management Bureau – conducts timber sales to both generate revenue and manage state forest lands. The bureau drafted a Habitat Conservation Plan (HCP) which will be available for review in March 2009. Additionally, the bureau has done a great deal of forest management reclamation;
- ♦ Minerals Management Bureau – primary revenue generator for the state. It generated \$37,453,810 from oil, gas, coal and other sources. The bureau is also involved in the restoration of the McDonald Mine in Lincoln; and
- ♦ Real Estate Management Bureau – generated \$11,438,972 from easements, leasing, land sales, land banking, and navigable river revenue. Bureau activities include the Spring Prairie Center in Kalispell and wind energy project developments at Judith Gap, Martinsdale, and Springdale.

ACTION ITEMS

1208-2 FWP: ROYAL TETON RANCH BISON AGREEMENT

Ms. Sexton stated this agreement is between FWP and the Royal Teton Ranch to eliminate domestic livestock grazing and to provide for passage of free-roaming bison along the west side of the Yellowstone River, north of Yellowstone National Park. The agreement provides for payment of \$75,500 to the Church Universal and Triumphant annually, over a period nineteen years, as compensation for ending livestock grazing and for impacts to ranch operations.

Paul Sihler, FWP Field Services Administrator, requested approval of a 30-year lease that would eliminate livestock grazing on the 7500-acre ranch and provide safe passage for free-roaming bison out of Yellowstone National Park. Initially the project would allow for 25 bison (that have tested negative for brucellosis) to move out of the park. The number would increase to 100 in the future. The agreement implements a phase of the Interagency Bison Management Plan (IBMP), which the state approved in 2000. The project allows free-ranging bison to move outside of the park onto forest service lands. The removal of the cattle and the testing of the bison drastically minimized any risk of transmission of brucellosis from bison to cattle.

This agreement is part of a \$3.3 million transaction with the Royal Teton Ranch that will be paid for by \$1 million of private money raised by the National Parks and Conservation

Association, the Greater Yellowstone Coalition, and the National Wildlife Federation; \$300,000 from the state; and the remainder of the funds from the federal government.

Some of the objections received from the public were:

- ♦ cost;
- ♦ the Interagency Bison Management Plan itself;
- ♦ the impact on other species;
- ♦ the conditions under which bison are allowed outside the park; and
- ♦ ongoing responsibilities of FWP.

394 comments were received on the environmental assessment (EA) from across the nation, with a number of people speaking at the FWP commission meeting December 11, 2008. There was an initial vote of 2-2 on the project, prompting the commission to have a conference call on December 12, 2008, where an additional 18 people offered comment. The project passed the commission with a vote of 4-0.

The Royal Teton Ranch property was recognized as a conservation priority over 30 years ago. In the intervening years, efforts to conserve it have been thwarted by both presidential veto of a funding source that would have put it into public lands, and the property having been sold twice to private landowners. A conservation easement was placed on a portion of it and ten years ago. Since then, the IBMP again identified the land as a critical priority for bison management. Mr. Sihler recognized Pat Flowers, FWP, for his efforts on the IBMP.

Tim Stevens, National Parks Conservation Association Program Manager, stated that the NPCA strongly supports the project. The agreement provides a huge step forward in allowing bison to move north out of Yellowstone, by assuring the separation of cattle and bison. The project offers protection for both landowners and wildlife. He noted the broad support for this project, both locally and nationally. Mr. Stevens also praised Governor Schweitzer's leadership and assistance in moving the IBMP forward.

Jim Wisman, Gallatin Wildlife Association board member, stated opposition to the project and asked that the Land Board reconsider alternatives that were not presented in the EA.

Mr. Wisman referenced the 394 comments in opposition to the project. He noted that all but two of the comments were from bison advocates. He asked the board request renegotiation of the project. Mr. Wisman commended Pat Flowers for his extremely hard work on this deal over a long period of time, as well as all the parties involved in getting bison onto the landscape. He asked for more tolerance, wondering why the bison would not be allowed to remain year-long. Mr. Wisman stated that the General Accounting Office report recommended either revising the agreement or scrapping it. He stated that if the state planned to spend this amount of money, a better deal must be agreed upon. Mr. Wisman added that bison are nearly extinct in Montana, as no reproduction is allowed to happen. Allowing the bison to roam onto national forest land does not do enough for the bison. He referenced other nearby locations—such as Cedar Creek—as excellent bison habitat. He expressed concern over the bison crossing the river onto non-sanctioned land, thus rendering the project unsuccessful.

Mr. Wisman stated that it is understood that the public will not be allowed to hunt the bison in the first year, but that there are a lot of things that need to be considered. He asked FWP if the \$300,000 funding is from Habitat Montana?

Mr. Sihler stated that the funding will come from FWP's General Licensing Fund as an annual payment of \$15,000 per year for 20 years.

Mr. Wisman stated that the public is not getting any habitat that they do not already own. He asked the Land Board to review the comments and consider alternatives. He stated belief that the project is doomed to fail if the bison do not follow the state's proscriptions.

Ben Lamb, Montana Wildlife Federation, said while GWA is one of MWF's affiliates, MWF is in support of the project. He reiterated that many groups and organizations have been frustrated with the lack of progress in bison conservation, and that this project is a good foundation for starting a new dialogue on how to move forward with bison conservation in the state.

Motion made by Mr. McGrath for approval of the Royal Teton Ranch bison agreement. Seconded by Ms. McCulloch.

Governor Schweitzer stated that 85 percent of Montana's budget goes toward education, healthcare, and the justice system. However, a great deal of his time has also been spent on the issues of bison, the IBMP, and brucellosis.

Governor Schweitzer reminded the Land Board that in 2002 Montana and federal agencies signed the IBMP. During the process, the Governor had been critical of parts of the plan; however, a key ingredient of the vision held by the initiators of the IBMP was this specific easement, to allow additional movement of bison outside of the park in the Gardiner area. The Governor agreed that this plan is not perfect and the number of bison allowed out of the park could be greater, but reiterated that this plan is a step forward. With only \$300,000 contributed by the state, Montana is a minority partner in this project. Governor Schweitzer stated his support of this project as a first of many future steps in the continued process of bison and brucellosis management.

Mr. Johnson asked what role the Montana Stockgrowers Association played in the proposed project?

Governor Schweitzer stated that the Montana Stockgrowers Association was the primary author of the IBMP. The IBMP specifically states that the IBMP will not be successful unless the specific tracts of land in the proposed project were utilized for the exact purpose intended by the proposal under consideration at this time.

Motion to approve the Royal Teton Ranch bison agreement carried unanimously.

1208-3 FWP: CREE CROSSING LAND ACQUISITION

Paul Sihler stated the acquisition would conserve 245 acres of riparian habitat along two miles of the Milk River and a ten-acre oxbow wetland. The area is located north of the Nelson Reservoir where FWP has a number of wildlife management area properties as part of the Milk River Wildlife Management Area. The appraised value of the property is \$719,500. The habitat supports white-tailed deer, mule deer, pheasants, sharp-tailed grouse, raptors, eight Montana species of concern, and many non-game species. FWP anticipates the area to have high use for hunting.

FWP received seven written comments and 25 emails in support of the acquisition. One written comment was received in opposition over moving land out of agricultural production.

Motion made by Ms. McCulloch for approval of the acquisition. Seconded by Mr. Morrison. Carried unanimously.

1208-4 OIL AND GAS LEASE SALE (DECEMBER 9, 2008)

Ms. Sexton stated this is for approval of the December 9, 2008, oil and gas lease sale which included:

- ♦ 359 tracts covering 151,448.86 acres which were sold for a total of \$1.1 million;
- ♦ average bid of \$7.31/acre;
- ♦ high bid of \$160/acre for Tract 211 in Hill County; and
- ♦ largest total bid of \$99,200 for Tract 315 in Roosevelt County.

The DNRC applied stipulations to the leases, especially for tracts in Beaverhead and Madison counties and along the Rocky Mountain Front. The DNRC worked with the MWF and FWP to update and enhance the Rocky Mountain Front stipulations. The stipulations include:

- ♦ no surface occupancy for all wildlife management areas that contain state land; and
- ♦ notification be given to surface owners that tracts of state-owned mineral rights tracts had been nominated.

Ben Lamb, Montana Wildlife Federation, commended the DNRC staff for their cooperation in addressing the concerns of MWF and thanked Governor Schweitzer and Superintendent McCulloch for their leadership on the issue. The work done allows approaching the oil and gas issue from a conservation standpoint as well, recognizing that oil and gas production can occur in conjunction with maintaining Montana's outdoor heritage. MWF believes that the new stipulations allow for the state's continued development and generation of income in an area often describes as some of the top wildlife habitat in the lower 48. The stipulations allow development to be done in a sensitive manner that will maintain all of the traditional uses along the Rocky Mountain Front (agriculture, hunting, fishing, hiking, wildlife watching, etc).

Kent Maiden, Gallatin County resident, spoke on behalf of the 170+ individuals who sent a letter to the Land Board from the Western Justice Law Association. The letter requested that the Land Board not approve the leasing of the three tracts in Bridger Canyon.

Mr. Maiden stated that the larger issue is that this instance is an example of the start of a brand new paradigm in the West: surface values, and the values brought to the local economy as a result, begin to approach the anticipated benefits from subsurface values. The issue will continue to grow throughout the state and the Rocky Mountain West. Bridger Canyon resident feel that the government needs to be more out in front on the issue. Mr. Maiden referenced the concerns and outrage expressed by residents of Sweet Grass and Gallatin counties over the lack of notice posted for those leases.

The most prudent action would be for the Land Board to table these particular leases until such time as the community has the opportunity to muster its own understanding of the implications, as the gas and oil is not going anywhere.

There was only a single bidder for the tracts in Gallatin County. The *Bozeman Chronicle* printed an unscientific poll asking if the public supported selling those exploration rights for \$1.50 per acre. The vote was 20-80 in favor of selling the rights. Mr. Maiden stated that it would be prudent for the Land Board not to accept the bid.

Dick Clotfelder, Bridger Canyon Property Owners Association past-chair, cited his 46 years of experience in commercial real estate. In Bridger Canyon there are 350 different property owners, with 245 homes. If 100 homes are taxed at an equivalent rate then \$781,000 would be paid in taxes (70 percent of the taxes go to schools in the state,

which would total \$546,000). If property values depreciate because of oil and gas drilling—which commonly happens in areas where this type of home exists—a ten percent drop in values and subsequent taxes would result in a loss of \$54,667 per year. If there were a 50 percent drop in property values, the resulting loss would be \$273,000.

Assuming a value of \$50 per barrel for oil with a six percent royalty and 12 wells on these three parcels (160-acre limit per well), 18,226 barrels annually would need to be produced in order to recover the \$54,000 lost from taxes at a ten percent decrease; if the property values decreased fifty percent, 91,000 barrels would need to be produced annually to recover the loss in property values.

Mr. Clotfelder stated that the Land Board would be making a decision to lease three sections for \$2900 while forcing a potential loss to the state of \$54,000 to \$273,000 annually. Bridger Canyon is an area that is built up with big homes and big property owners. He stated his belief of the importance that the board withdraws these three sections from the approval process at this point and reexamine the whole economics.

Cory Fisher, Trout Unlimited, stated that TU is not against oil and gas leasing and understands the benefits to the state trust lands. TU is, however, protesting about 11 percent of this lease sale over concerns for native trout in important fisheries in southwest Montana (such as the Big Hole, Beaverhead, and the Ruby rivers).

Mr. Fisher stated that TU's main concern is that needs of fish and wildlife go beyond administrative boundaries. When wide blocks of land such as this are leased out, it is appropriate to perform a MEPA analysis to make sure that appropriate stipulations are put in place in appropriate areas besides the Rocky Mountain Front. In 2003, legislation was passed that exempted the DNRC from performing MEPA, but that this does not necessarily exclude the DNRC from performing that analysis.

Regarding native and blue ribbon fisheries, it is important to make sure that the irretrievable commitment of resources is not made lightly or without appropriate stipulations in mind. Of the 40 tracts that are of concern for TU, four of them have a quarter-mile setback stipulation, and 15 tracts have received an eighth-mile setback stipulation. Mr. Fisher stated that the BLM places a half-mile stipulation on blue-ribbon and cutthroat fisheries where the genetic purity is 99 percent or above. TU would like to ensure that as the Land Board moves forward with these lease sales that landscape planning is considered and appropriate stipulations are put in place.

Motion made by Mr. Johnson to approve the oil and gas lease sale. Seconded by Ms. McCulloch.

Mr. Morrison asked that the DNRC address the economic concerns raised by Mr. Clotfelder.

Ms. Sexton stated that at this point the land has merely been leased, and there is no proposed development. The DNRC utilized a number of stipulations, and spoke to the Bridger Canyon residents as to their options, given their concerns over property values. The best option for the residents would be looking at a mineral right exchange. Another option would have been to have the surface landowners bid on the parcels, but they did not bid.

Although there are some economic discussions as to long-term benefit, the DNRC's responsibility is to the fiduciary management of the trust. Ms. Sexton noted these tracts had been previously deferred (*see September 15, 2008, Land Board minutes*) in order to provide better public notice and advertisement.

Mr. Morrison stated that he is supportive of Bridger Canyon residents' priority toward keeping their land pristine; however, they had a chance to bid on the tracts. He referenced the calculations presented by Mr. Clotfelder and asked if, by leasing this land and thereby property equities, that would best serve the objectives of the Land Board?

Ms. Sexton reiterated that merely leasing the land does not involve development and disturbance of the land. The opportunity for the DNRC is to either lease state lands or not lease state lands. If the DNRC does not lease state lands while nearby private mineral owners lease their lands, the DNRC is placed in an awkward position. Leasing of state lands allows state participation should development occur on privately owned lands. Any proposed development in the future will undergo a complete MEPA analysis.

Mr. Morrison asked if the DNRC had done economic calculations, similar to the numbers presented by Mr. Clotfelder?

Ms. Sexton stated that economic evaluation is a difficult thing to do because the DNRC does not know what the other mineral rights owners will do. The DNRC is only able to account for the three state parcels in that area. A true economic analysis would require taking into account the potential for development from private and federal mineral rights owners. She stated that an appraisal can be done of the complete value of the state surface and mineral rights, but without leasing and an appraisal, the state cannot know what value may be lost.

Mr. Morrison asked if there was any calculation by the DNRC with respect to the potential loss of existing property tax.

Ms. Sexton answered that this would only be if development occurred, and reiterated that there is no development proposed at this time.

Mr. Morrison asked if the state would even lease the land if development was not a possibility?

Ms. Sexton stated that only two percent of the lands leased by the state currently have development on them.

Mr. Morrison asked if there is any information about whether the mere execution of a lease would affect property value?

Ms. Sexton said that the DNRC has not done that type of economic analysis.

Mr. Schultz stated the information would have to be demonstrated with an appraisal. The only way to determine an impact on property values would be to perform appraisals for both with, and without a lease. A case could possibly be made if there was an active oil well causing a visual impact, but strictly with the act of leasing most surface appraisers would have no idea if the subsurface was even leased. Mr. Schultz said that the assertion that leasing definitely leads to a reduction in property values cannot be supported without market evidence.

Governor Schweitzer stated that when these specific tracts were deferred, the DNRC had communicated with local landowners to address their concerns. The DNRC made clear that the auction was public and that anyone could bid on these pieces of land; and, if the Bridger Canyon residents became the lease owners they would have time to do a minerals exchange.

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Since the tracts sold for \$2900, had the 350 property owners in Bridger Canyon purchased the lease, it would have cost each person approximately \$8.00. Governor Schweitzer asked if there was only the one bid on these tracts?

Ms. Sexton confirmed that there was only one bid and that she had spoken with area property owners regarding the opportunity they had to bid on the tracts. The DNRC was surprised that that no Bridger Canyon property owners attended the lease sale, or bid on the tracts.

Governor Schweitzer asked again for confirmation that there was no competitive bidding from any of the 350 landowners or their attorneys and that the tracts were leased for only \$2900.

Mr. Clotfelder stated that there was no time to do a land swap between the time of notice and the time of the originally proposed lease sale, but that the Bridger Canyon residents are prepared to write a check to pay for the lease.

The residents of Bridger Canyon felt that the stronger legal position was to not bid on the tracts, because the process was flawed. Mr. Clotfelder stated his belief that the lease process is archaic and needs to be updated. The letter written to the Land Board by residents' attorney was self-explanatory, and the residents are prepared to take those steps if necessary. The Bridger Canyon residents asked that those three parcels be withdrawn from the bid process until proper studies have been made as per the letter sent to the board. However, if the Land Board needs to approve the lease today, the residents are prepared to take on the lease responsibility for the next ten years for the \$2900.

Mr. Maiden stated that it was the Bridger Canyon residents' understanding that there is a legal obligation to pursue development of leased land. They refrained from bidding as it would have been fraudulent to bid as if they were going to proceed with some development. The property owners believed, on the advice of attorneys, that this put them out of the running as viable bidders.

Governor Schweitzer stated that his experiences with auctions in general showed if an individual wished to bid on an item and the bid was closed before the individual could take action, any efforts to renegotiate the bid must be between the proposed bidder and the winning bidder.

The Governor agreed that there could always be room for improvement in leasing process, but that there is precedent. The current Land Board has made decisions to protect surface landowners, sometimes over the rights of the mineral owners.

Governor Schweitzer stated that there have only a few instances in the past four years where a lease had been removed before the actual bidding process began, but there had not been a single case in which the current Land Board determined that specific tracts be removed from lease consideration once the auction was conducted. He stated that his concern is that those who do business in oil and gas are looking to do competitive places to do business. Governor Schweitzer cautioned that if the state holds auctions which are subsequently backed out of, the result will be fewer businesses wishing to establish themselves in Montana.

Mr. Clotfelder reiterated that the oil and gas leasing process is flawed; and, that the economics have not been reviewed.

Mr. Morrison asked for clarification regarding the residents' contention that they were unable to bid because to bid requires a pledge that there is intention to develop.

Ms. Sexton stated that there is a passage in the Administrative Rules of Montana that states that some due diligence is required; however, the DNRC rarely pursues that. Had the residents placed a bid, it would have given them a stronger position to propose an exchange as a leaseholder. During the time the tracts were deferred to allow for more public notice, the DNRC communicated with several residents about the opportunity for mineral exchanges. While mineral exchanges have not been executed before, the option exists in statute, and that is the very best way to protect the long term viability of a particular area along with gaining revenue for the trust.

Governor Schweitzer asked if the state has ever challenged an entity for the lack of due diligence in not developing mineral assets on leased land?

Monte Mason, Minerals Management Bureau Chief, stated that due diligence is addressed by comparing the activity of the state's lessee to other activity in the area. The DNRC lessee must develop their lease along the same lines or pace as the development on the surrounding lands. If there is no development in the surrounding areas, whoever holds the DNRC lease is as diligent as all others in the region.

Governor Schweitzer asked Mr. Mason if the state had ever pursued an entity for lack of due diligence in developing mineral resources.

Mr. Mason stated that the state had addressed this issue in eastern Montana, where there is active development on adjoining lands, raising concerns of drainage, thereby eliminating the recovery of the state's share of the mineral values.

Mr. Morrison stated his understanding that there is a diligence requirement that requires the lessee to attest to plans to develop the land, and that it is not historically enforced in areas where there is no surrounding comparative development. He stated that this issue is important as Montana's cities grow into resource-rich areas. He requested affirmation that lease-holders would not be permitted to detain the process, but negotiation options do exist to offer alternatives.

Mr. Mason stated that is the prudent lessee standard, but there is no specific requirement, as the resource is speculative until the value of the potential resources are explored.

Mr. Morrison asked what action the DNRC would take if a lessee stated their specific intention was to not to develop the resources?

Mr. Mason stated DNRC's stance is that so long as there is no nearby exploration, the lessee is exhibiting due diligence; however, should exploration occur in the region, the DNRC would inquire about the lessee's plans to maintain diligence. Oil and gas leases are not conservation leases, but purchasing a lease would allow time to explore additional options to preserve the area.

Mr. Morrison asked what options exist for the residents of Bridger Canyon and Jackson Creek to preserve this land as it exists since the tracts were purchased by another party?

Ms. Sexton stated that the option still exists for a mineral exchange, despite the residents not being leaseholders. For this to occur, an appraisal of the mineral value

would need to be completed, and other mineral rights of equal or greater value would need to be determined to offer an exchange proposal.

Governor Schweitzer asked how many acres are owned collectively by the 350 landowners?

Mr. Clotfelder stated that the landowners have approximately 14,000 acres.

Governor Schweitzer asked who owns the mineral rights for those acres?

Mr. Clotfelder stated that ownership varies from parcel to parcel.

Governor Schweitzer determined that the tracts in question comprise approximately three percent of the area, asked what the Bridger Canyon residents had planned to prevent the other 97% of mineral rights from being developed?

Mr. Clotfelder stated that Bridger Canyon has its own zoning district and has worked closely with Gallatin County. In September 2008, the county re-evaluated the mineral extraction issues and determined that any private landowner wishing to develop the mineral assets on his property would need to go through a very stringent conditional use permit process. He noted that in 2003 a methane developer was denied a permit to drill after to failing to meet the requirements of the zoning district. Mr. Clotfelder again reiterated that the [potential] loss of \$294,000 in property tax values is a significant amount.

Mr. McGrath clarified that the bidding process is complete, so the Land Board no longer has the ability to negotiate with the land owners. The process was completed in an appropriate, public fashion. The only currently relevant issue at this time is to approve or disapprove the leases as they have been bid upon. He stated that if there is any effort to develop these leases in the future, there is a specific process required, stipulations and local requirements that must be complied with, which also involves a public process.

Motion to approve the oil and gas lease sale carried unanimously.

Governor Schweitzer exited the meeting, remanding chair duties to Ms. McCulloch.

1208-5 FINAL APPROVAL OF THE DNRC/GOGUEN LAND EXCHANGE

Ms. Sexton stated that this involves exchanging 434.8± acres of state trust land for 601± acres on three parcels of land in the Whitefish area. They are Lupfer Flats (569.7 acres), Livermore Flats (30 acres), and an improved commercial property in the City of Whitefish. The exchange has undergone required analysis and extensive public involvement, including the Trail Runs Through It. The state greatly benefits from this exchange, from the standpoints of land value, revenue generation, and increased public access. Ms. Sexton commended the DNRC staff for their efforts in this exchange.

Diane Conradi, Michael Goguen's attorney, read a letter from Mr. Goguen which restated his initial intention that the exchange be a lopsided win for the both state and the Whitefish community. The exchange allows for a public trail that will cross Goguen's private, state, and federal lands. Mr. Goguen's letter praised the innovative nature of the Whitefish Neighborhood Plan and the Trail Runs Through It Program.

Ms Conradi added that Mr. Goguen has committed \$3 million toward completing the trail upon completion of the exchange, with \$1 million dedicated to obtaining easements on state lands. She also praised the efforts of the DNRC staff for their work in completing this project

Nancy Woodruff, Whitefish City Council member/deputy mayor, stated the land exchange is the foundation for implementing the neighborhood plan. The community support for this project is far reaching, and has never wavered. The city of Whitefish expects a long-term commitment in managing and maintaining the resulting trails.

Mike Frost, Elkhorn homeowner, gave his support for the exchange (part of which is adjacent to his property). He stated that in addition to the previously mentioned benefits, this exchange will help facilitate a fire mitigation effort in the Whitefish area. Elkhorn is one of the few communities in Montana that is nationally recognized as a “fire-wise” community. The community of Elkhorn is currently in the process of putting together a community wildfire protection plan for all of the Whitefish area. This exchange falls in line with that effort. Mr. Frost stated that Mr. Goguen and others play a critical part in creating a network of fire-wise communities to the west of Whitefish that will protect both the community and state trust lands.

Lin Akey, Flathead Gateway Partners Group, reiterated the overall benefits of this exchange for the state, the community, and future generations.

Mike Jopek, HD 4 Representative, stated that the Whitefish community has been working on this project for a long time. He highlighted the idea of a conservation buyer, meaning that an individual who enters into a partnership with a community must go above and beyond. Mr. Jopek referenced HA 57 which ratifies the ability to sell development rights on state lands at fair market prices. He stated that this particular conservation buyer has made an endowment to the city to ensure public access and recreation and managed activity on some of these state lands, as well as setting a precedent on how to move forward in the coming years.

Motion made by Mr. Morrison to approve the Goguen land exchange. Seconded by Mr. McGrath.

Mr. Morrison stated that as a resident of the Whitefish area, he has been personally involved in this project from its inception. While the exchange is important to Whitefish, it also will become an important issue elsewhere as land values increase to levels where the traditional uses of the land and the trust are challenged. These particular issues will set a good example for other kinds of decisions the Land Board will be making in the years ahead. Mr. Morrison praised the DNRC staff and Bob Sandman, Northwest Land Office area manager, for their dedication in seeing the exchange to fruition.

Motion carried 4-0 (*Governor Schweitzer absent*).

Governor Schweitzer returned to the meeting.

1208-6 PRELIMINARY APPROVAL FOR SALE OF LAND BANKING PARCELS:

A. LEWIS AND CLARK COUNTY

Ms. Sexton stated this is a 76.3 acre parcel. It will be sold with deed restrictions limiting development to one single family residence and a 39-acre no-build-zone to mitigate potential impacts to wildlife.

Motion made by Ms. McCulloch for preliminary approval for the parcel in Lewis and Clark county. Seconded by Mr. McGrath. Carried unanimously.

B. TOOLE COUNTY

Ms. Sexton stated that these parcels had been previously deferred due to questions from the lessee, which have since been resolved. The four parcels are 160 acres each of grazing land. They were appraised at \$23,200, with access.

Motion made by Mr. Johnson to approve the minimum bid. Seconded by Mr. McGrath. Carried unanimously.

1208-7 PROPOSED REAL ESTATE MANAGEMENT PROGRAM RULES ADOPTION

Ms. Sexton stated the DNRC worked with several interest groups, and that the proposed rules have undergone extensive public review. The rules:

- ♦ direct the DNRC in regard to developing entitlements on lands in order to increase the value;
- ♦ indicate how to maximize revenue to benefit the trust; and
- ♦ designate which lands are most suitable for development.

Tim Davis, representing the Montana Smart Growth Coalition, commended the Real Estate Management Bureau for their determined efforts to draft administrative rules, and thanked the board for its approval.

Motion made by Mr. McGrath to approve the REMP rules. Seconded by Mr. Johnson. Carried unanimously.

ARM 36.25.901 through 36.25.918 were effective as of December 25, 2008.

1208-8 DISCLAIMER OF INTEREST – JACQUELINE ROBB

Ms Sexton stated that a warranty deed dated March 19, 1908, indicated a tract of land reserved for school purposed; but upon review, records reveal no evidence of state ownership.

Motion made by Mr. Morrison to issue the disclaimer of interest for the tract. Seconded by Mr. McGrath. Carried unanimously.

1208-9 PPL, LLC. v. STATE OF MONTANA (CDV-2004-846): RESOLUTION FOR DISPOSITION OF PROCEEDS OF THE AWARD OF COMPENSATORY DAMAGES

Ms. Sexton stated that is a resolution directing the proceeds from *PPL v. State of Montana*, which was decided in First Judicial District Court, Lewis and Clark County, and is currently under appeal to the Supreme Court. The resolution:

- ♦ Determined that it is in the best interest of the current and future beneficiaries of the common school trust to secure the compensatory damages in a manner that will compensate the trust for past damages to school trust lands and continue to generate revenue both now and into the future.
- ♦ Directs that when the judgment is paid to the state, the entire amount, including all post-judgment interest, be deposited in the Common School Trust in the state land bank fund, so that the *res* of the trust will be enhanced and preserved, and further directs the DNRC to presently account for the money accordingly.
- ♦ Expressly reserves the Board of Land Commissioners authority to determine the full market value, and to determine all other terms and conditions of future leases of state school trust navigable riverbed lands under Montana's hydroelectric resources laws.

Motion made by Mr. McGrath to approve the resolution. Seconded by Ms. McCulloch. Carried unanimously.

1208-10 RIGHTS-OF-WAY:

A. RIGHT-OF-WAY-APPLICATIONS

Ms. Sexton noted that the North Portal Road Users Association requested an amended easement which would add a one percent conveyance fee.

She also noted the public recreation easement for the city of Whitefish, which is a part of the trail development included in the Goguen land exchange. The DNRC hopes that this type of easement will be precedent-setting and hopes to see similar requests in the future.

Motion made by Mr. Johnson to approve the easements. Seconded by Ms. McCulloch. Carried unanimously.

B. AMENDED SPRING PRAIRIE PERMANENT EASEMENT EXCHANGE

Ms. Sexton stated this easement exchange is an updated and amended approval request, due to a change in the valuation of the parcel (*see Item 408-9, April 21, 2008, Land Board meeting*).

Motion made by Mr. Morrison to approve the amended easement exchange. Seconded by Mr. McGrath. Carried unanimously.

PUBLIC COMMENT

Mr. McGrath thanked the members of the Land board for the remarkable progress that has been made in a number of areas. He also praised the staff members for all their work and efforts.

Mr. Morrison stated his admiration for the members of the DNRC for working with the board on issues that have at times been contentious or difficult. He also expressed his confidence in the incoming members.

Mr. Johnson echoed the other outgoing members of the board as to the privilege of serving on the Land Board, the dedication of the staff, and his conviction that the people of Montana have been well served.

Motion made by Mr. McGrath to adjourn. Motion seconded by Mr. Morrison. Carried unanimously.